

Montana Water Court
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FILED
04/28/2023
Sara Calkins
CLERK
Montana Water Court
STATE OF MONTANA
By: D'Ann CIGLER
41G-0388-R-2021
Weisz, Madeleine
35.00

IN THE WATER COURT OF THE STATE OF MONTANA
UPPER MISSOURI DIVISION
JEFFERSON RIVER BASIN (41G)
PRELIMINARY DECREE

CLAIMANTS: Barry L. Rice; 105 Trails End Lane LLC;
Sitz Angus Farms LP

OBJECTORS: Sitz Angus Farms LP

COUNTEROBJECTOR: BFR Family Limited Partnership
LLLP

CASE 41G-0388-R-2021
41G 195592-00

Implied Claim:
41G 30159527

NOTICE OF FILING OF MASTER'S REPORT

This Master's Report was filed with the Montana Water Court on the above stamped date. Please review this report carefully.

You may file a written objection to this Master's Report within **10 days** of the stamped date if you disagree or find errors with the Master's findings of fact, conclusions of law, or recommendations. Rule 23, W.R.Adj.R. If the Master's Report was mailed to you, the Montana Rules of Civil Procedure allow an additional 3 days be added to the 10-day objection period. Rule 6(d), M.R.Civ.P. If you file an objection, you must serve a copy of the objection to all parties on the service list found at the end of the Master's Report. The original objection and a certificate of mailing to all parties on the service list must be filed with the Water Court.

If you do not file a timely objection, the Water Court will conclude that you agree with the content of this Master's Report.

MASTER'S REPORT

FINDINGS OF FACT

1. Claim 41G 195592-00 appeared in the 41G Preliminary Decree issued February 15, 2018. It is owned by Barry L. Rice, 105 Trails End LLC, and Sitz Angus Farms LP. Claim 41G 195592-00 received an objection from Melvin D. Maichel and Sitz Angus Farms LP. It received a counterobjection from BFR Family Limited Partnership LLLP. Maichel withdrew his objection on May 26, 2021.

2. On January 10, 2023, the parties filed a Stipulation and Agreement that resolves the objections to claim 41G 195592-00.

3. The parties agree that an implied claim should be created from claim 41G 195592-00 to make a portion of the water right more junior. Claim 41G 195592-00 is a right to 10 cfs from Camp Creek with a priority date of December 31, 1865. The parties agree that the flow rate for claim 41G 195592-00 should be reduced to 5 cfs and an implied claim with a priority date of December 31, 1875 should be generated to represent the remaining 5 cfs. Claim 41G 30159527 will be generated to represent a 5 cfs right from Camp Creek with a December 31, 1875 priority date.

4. The parties also requested a modification to the period of diversion and the period of use from May 1 – October 1 to March 15 – October 30. In support, Rice and Sitz filed a Supplement to Stipulation on February 6, 2023. The Supplement included an affidavit of Robert L. Sitz. Sitz is 56 years old and was raised on his family ranch near the head of Norwegian Creek. Sitz has lived and worked on the ranch throughout his life. Sitz indicates that the historical period of use and period of diversion is March 15 – October 30. The period of use and period of diversion should be modified accordingly.

5. The parties ask that the following information remark be added to claim 41G 195592-00 and implied claim 41G 30159527:

THIS WATER RIGHT CLAIM DOES NOT EXPAND OR CLAIM WATER IN ADDITION TO THE WATER DECREED TO NORWEGIAN DITCH COMPANY IN GALLATIN COUNTY DISTRICT COURT DECREE NO. 5591. THE TOTAL AMOUNT OF WATER COLLECTIVELY ENTITLED UNDER 41G 143429 00, 41G 143431 00, 41G 194563 00, 41G 195591 00, 41G 195592 00, 41G 195595 00, 41G 195596 00, 41G 195597 00, 41G 195598 00, 41G 197155 00, 41G 197156 00, AND 41G 30159527 IS 1200 MI MEASURED IN THE NWSWSE OF SECTION 27, T2S, R2W.

6. The requested information remark includes claims owned by Dry Hollow Inc., which is not a party to this case. Additionally, the total flow rate for the claims listed in the remark exceeds 1200 MI. A filing deadline was set for the parties to address whether Dry Hollow consented to the information remark and whether there was sufficient guidance for how to administer the water rights referenced in the remark.

7. On March 17, 2023, a copy of the Stipulation and Agreement was filed with a signed statement from Diane Rice, President of Dry Hollow, Inc., stating that she read and approved of the Settlement and Stipulation in this case.

8. On March 27, 2023, Trails End filed a response stating that the parties believe the information remark will not be difficult for a water commissioner to measure and administer. The response indicates that the other parties to the case concur with the response.

Information remarks are “[r]emarks that limit, define, or explain unique aspects of a claim....” Rule 2(a)(57), W.R.C.E.R. The requested information remark serves to limit the use of claims 41G 195592-00 and 41G 30159527 and does not otherwise alter any elements of the claims. The information remark should be added to the claims as requested by the parties.¹

9. Claim 41G 195592-00 received a DNRC issue remark stating that the ditch name was modified as a result of DNRC review. No one objected to the ditch name. The issue remark has served its purpose of providing notice and should be removed from the claim.

CONCLUSIONS OF LAW

1. A properly filed claim of an existing right or an amended claim of existing right is prima facie proof of its content. § 85-2-227, MCA. This prima facie proof may be contradicted and overcome by other evidence that proves, by a preponderance of the evidence, that the elements of the claim do not accurately reflect the beneficial use of the

¹ The parties filed an Answer Brief on April 19, 2023 in response to a question concerning whether the information remark should be added to all claims mentioned in the remark or just claims 41G 195592-00 and 41G 30159527. The Answer Brief confirmed that the remark should only be added to claims 41G 195592-00 and 41G 30159527.

water right as it existed prior to July 1, 1973. This is the burden of proof for every assertion that a claim is incorrect. Rule 19, W.R.Adj.R.

The Stipulation indicates that the period of use and period of diversion should be modified from May 1 – October 1 to March 15 – October 30. The evidence in support of the requested modification overcomes the prima facie status of the claim by a preponderance of the evidence.

2. Section 85-2-248(2), MCA requires the Water Court to resolve all issue remarks that are not resolved through the objection process. The Montana Water Court has the authority to resolve issue remarks when the claim file and information available to the Court provide a sufficient basis to do so. § 85-2-248(3), MCA. The issue remark appearing on claim 41G 195592-00 is a notice-type issue remark. The remark has served its purpose of providing notice. The remark does not overcome the prima facie status of the claim and should be removed.

3. The claimant of a water right claim may waive the advantage of § 85-2-227, MCA by requesting a reduction or limitation of an element of a water right claim. The water court may accept a claimant's requested reduction or limitation without further presentation of evidence unless there is an unresolved issue remark on the claim. Rule 17(c), W.R.Adj.R.

The Stipulation asks for the generation of an implied claim to represent a more junior priority date for 5 out of the 10 cfs flow rate claimed by 41G 195592-00. A more junior priority date for a portion of the claim constitutes a reduction and may be accepted without further presentation of evidence.

4. Implied claims are claims authorized by the water court to be separated and individually identified when a statement of claim includes multiple rights. Rule 2(33), W.R.C.E.R. If the single claim form containing multiple rights has been timely filed, the Section 85-2-221, MCA statutory deadlines for filing claims is satisfied. Rule 35(c)(3), W.R.C.E.R.

Support for the generation of implied claim 41G 30159527 is contained within the claim filing documents for claim 41G 195592-00.

RECOMMENDATIONS

1. Claim 41G 195592-00-00 should be modified as provided above.
2. Claim 41G 30159527 should be generated from claim 41G 195592-00.

Post Decree Abstracts of Water Right Claims are served with the Report to confirm that the recommended corrections have been made in the state's centralized record system.

ELECTRONICALLY SIGNED AND DATED BELOW.

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Note: Caption and Service List Updated 4-25-2023

\\JUDHLNSRV-DATA\Share\JUDGALH2OSRV (Datavol)\Share\WC-BASIN FOLDERS\41G PD\CASES\41G-R388\MW 41G-0388-R-2021 mr 4-25-2023 bw.docx

**POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
JEFFERSON RIVER
BASIN 41G**

Water Right Number: 41G 195592-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

***Owners:** BARRY L RICE
PO BOX 216
HARRISON, MT 59735 0216

Owners: 105 TRAILS END LANE LLC
4627 FAIRFIELD DR
CORONA DEL MAR, CA 92625

SITZ ANGUS FARMS LP
% ROBERT L SITZ
PO BOX 129
HARRISON, MT 59735 0129

Priority Date: DECEMBER 31, 1865

Type of Historical Right: USE

Purpose (use): IRRIGATION

Irrigation Type: SPRINKLER/FLOOD

***Flow Rate:** 5.00 CFS

ON JUNE 22, 1995, A STIPULATION WAS FILED BETWEEN CO-OWNERS REGARDING THE PERCENTAGE OWNERSHIP OF THIS RIGHT. AS OF JUNE 22, 1995 EACH CO-OWNER OWNED AN UNDIVIDED INTEREST IN THE TOTAL FLOW RATE OF THIS WATER RIGHT. THE ORIGINAL PERCENT OWNERSHIP OF EACH UNDIVIDED INTEREST IS SET FORTH IN THE STIPULATION. THE OWNERSHIP INTERESTS AS SET FORTH IN THE STIPULATION ARE SUBJECT TO CHANGE UPON FURTHER AGREEMENT OF THE PARTIES OR THROUGH TRANSFER OF ALL OR A PORTION OF THE RIGHT. IF TRANSFERRED, THE RESPECTIVE INTERESTS SHOULD BE UPDATED THROUGH THE THE FILING OF WATER RIGHT TRANSFER CERTIFICATES IN ACCORDANCE WITH 85-2-224, MCA.

Volume: THE TOTAL VOLUME OF THIS WATER RIGHT SHALL NOT EXCEED THE AMOUNT PUT TO HISTORICAL AND BENEFICIAL USE.

Climatic Area: 4 - MODERATELY LOW

***Maximum Acres:** 2,800.00

Source Name: CAMP CREEK

Source Type: SURFACE WATER

Point of Diversion and Means of Diversion:

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		SESESW	33	2S	2W	MADISON

Period of Diversion: MARCH 15 TO OCTOBER 30

Diversion Means: HEADGATE

Ditch Name: NORWEGIAN DITCH

Period of Use: MARCH 15 TO OCTOBER 30

***Place of Use:**

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1	226.00		W2	26	2S	2W	MADISON
2	221.00		E2	26	2S	2W	MADISON
3	36.00		SESE	34	2S	2W	MADISON
4	586.00			35	2S	2W	MADISON
5	85.00		SW	36	2S	2W	MADISON
6	13.00		E2NENE	3	3S	2W	MADISON
7	4.00		NESENE	3	3S	2W	MADISON
8	78.00		NW	2	3S	2W	MADISON
9	640.00			24	2S	2W	MADISON
10	620.00			30	2S	1W	MADISON
11	160.00		SW	20	2S	1W	MADISON
12	8.00		S2S2SE	27	2S	2W	MADISON
13	100.00		NE	34	2S	2W	MADISON
14	23.00		NESE	34	2S	2W	MADISON
Total:	<u>2800.00</u>						

Remarks:

THIS WATER RIGHT CLAIM DOES NOT EXPAND OR CLAIM WATER IN ADDITION TO THE WATER DECREED TO NORWEGIAN DITCH COMPANY IN GALLATIN COUNTY DISTRICT COURT DECREE NO. 5591. THE TOTAL AMOUNT OF WATER COLLECTIVELY ENTITLED UNDER 41G 143429 00, 41G 143431 00, 41G 194563 00, 41G 195591 00, 41G 195592 00, 41G 195595 00, 41G 195596 00, 41G 195597 00, 41G 195598 00, 41G 197155 00, 41G 197156 00, AND 41G 30159527 IS 1200 MI MEASURED IN THE NWSWSE OF SECTION 27, T2S, R2W.

**POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
JEFFERSON RIVER
BASIN 41G**

Water Right Number: 41G 30159527 STATEMENT OF CLAIM

Version: 1 -- ORIGINAL RIGHT

Status: ACTIVE

Owners:

BARRY L RICE
PO BOX 216
HARRISON, MT 59735 0216

105 TRAILS END LANE LLC
4627 FAIRFIELD DR
CORONA DEL MAR, CA 92625

SITZ ANGUS FARMS LP
% ROBERT L SITZ
PO BOX 129
HARRISON, MT 59735 0129

Priority Date: DECEMBER 31, 1875

Type of Historical Right: USE

Purpose (use): IRRIGATION

Irrigation Type: SPRINKLER/FLOOD

Flow Rate: 5.00 CFS

ON JUNE 22, 1995, A STIPULATION WAS FILED BETWEEN CO-OWNERS REGARDING THE PERCENTAGE OWNERSHIP OF THIS RIGHT. AS OF JUNE 22, 1995 EACH COOWNER OWNED AN UNDIVIDED INTEREST IN THE TOTAL FLOW RATE OF THIS WATER RIGHT. THE ORIGINAL PERCENT OWNERSHIP OF EACH UNDIVIDED INTEREST IS SET FORTH IN THE STIPULATION. THE OWNERSHIP INTERESTS AS SET FORTH IN THE STIPULATION ARE SUBJECT TO CHANGE UPON FURTHER AGREEMENT OF THE PARTIES OR THROUGH TRANSFER OF ALL OR A PORTION OF THE RIGHT. IF TRANSFERRED, THE RESPECTIVE INTERESTS SHOULD BE UPDATED THROUGH THE THE FILING OF WATER RIGHT TRANSFER CERTIFICATES IN ACCORDANCE WITH 85-2-224, MCA.

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